

CAROLYN S. EDWARDS

IBLA 73-179

Decided January 7, 1974

Appeals from decisions of Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers (M-21807 etc.).

Set aside and remanded.

Administrative Practice--Mineral Leasing Act: Generally--Mineral Leasing Act:  
Consent of Agency--Oil and Gas Leases: Consent of Agency--Oil and Gas Leases:  
Discretion to Lease

Where public lands are under the control of another federal agency, but the oil and gas deposits have not been withdrawn from leasing or expressly excepted from the leasing authority of the Department of the Interior under the Mineral Leasing Act, the recommendations of the other agency are important in determining whether a lease should be issued under the discretionary authority granted by that Act, but they are not conclusive, as the ultimate determination rests with the Department of the Interior. Conclusory recommendations will be given less weight by the Department than recommendations supported by background material and other data indicating the reasons for the recommendation.

Administrative Practice--Mineral Leasing Act: Consent of Agency--Oil and Gas  
Leases: Applications: Generally--Oil and Gas Leases: Consent of Agency-- Oil and  
Gas Leases: Discretion to Lease

Where an agency that controls public lands subject to the leasing  
authority of the

Department under the Mineral Leasing Act withdraws its objections to the issuance of oil and gas leases, or where it maintains an objection, but further consideration is warranted to determine if leasing may be allowed with adequate protective measures to overcome its objection and to determine if leasing is in the public interest, a decision by the Bureau of Land Management rejecting the issuance of the leases will be vacated and remanded for further consideration.

APPEARANCES: Michael J. Sullair, Esq., of Brown, Drew, Apostolos, Barton & Massey, Casper, Wyoming, for appellant.

#### OPINION BY MRS. THOMPSON

The appeals by Carolyn S. Edwards are from decisions dated October 17, 1972, of the Montana State Office, Bureau of Land Management, rejecting her ten applications filed June 7, 1972, pursuant to the Mineral Leasing Act of February 20, 1920, as amended, 30 U.S.C. § 181 et seq. (1970).

These applications 1/ were filed for lands included within the boundaries of the United States Range and Livestock Experiment Station, Miles City, Montana. The station, under the jurisdiction of the Agricultural Research Service, Department of Agriculture, was established by the Act of April 15, 1924, ch. 111, 43 Stat. 99. 2/

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1/ They bear serial numbers M21807 through 21813 and 21876 through 21878.

2/ The Act of April 15, 1924, noted that the Secretary of War had found that lands within the Fort Keogh Military Reservation were unnecessary for military purposes and had transferred them by Executive Order to the Department of the Interior "for disposition." The Act provided:

"\* \* \* the said lands are hereby transferred to and placed under the control of the United States Department of Agriculture for use by that department for experiments in stock raising and growing of forage crops in connection therewith \* \* \*."

The State Office sought the views of the Agricultural Research Service before acting on the offers. In reply, the Service recommended that the applications be denied. It stated extensive planning was required for changes in research and use of the areas in the immediate future, and that "[g]razing areas appropriate for research cannot be effectively planned and laid out if they are subject later to the disturbance that drilling activity would require." The Bureau quoted the Agricultural Research Service's objection as the reason for rejecting the offers.

The Secretary of the Interior has discretionary authority, under section 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1970), to lease oil and gas deposits in public lands. If he decides, however, to lease land not within any known geological structure of a producing oil or gas field, he must issue the lease to the first qualified applicant. *Id.* § 226(c). He may refuse to lease certain lands in order to protect other uses and resources by withdrawing the lands from oil and gas leasing and, in the absence of an express withdrawal of the oil and gas deposits, by rejecting offers in the exercise of this discretionary authority. *Udall v. Tallman*, 380 U.S. 1, 4 (1965); *Duesing v. Udall*, 350 F.2d 748, 750 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 912 (1966); *Haley v. Seaton*, 281 F.2d 620, 624-25 (D.C. Cir. 1960); *Jack E. Griffin*, 7 IBLA 155, 156 (1972).

If public lands are under the control of another federal agency, and the oil and gas deposits have not been withdrawn from leasing or expressly excepted from the leasing authority of the Department of the Interior under the Mineral Leasing Act, the recommendations of the other agency are important in determining whether a lease should be issued under that Act, but they are not conclusive. An agency's general conclusory recommendations will be given less weight by the Department than recommendations supported by background material and other data indicating the reasons for the recommendation. However, the ultimate determination to lease rests with this Department. *Agricultural Research Service*, A-31033 (January 17, 1969). 3/

In view of appellant's statements made in her appeal, on July 12, 1973, the Agricultural Research Service was requested to reconsider its objections to the issuance of the leases. In the request, appellant's

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3/ This is contrasted with the Mineral Leasing Act for Aquired Lands, 30 U.S.C. §§ 351-59 (1970), where the consent of the agency having jurisdiction over the aquired lands is specifically required.

position, stated in her appeal, was quoted as follows:

Edwards is willing to enter into such stipulations as the Agricultural Research Service might deem appropriate for the restriction of leasehold operations on the lands and believes that such action would serve to encourage and further the multiple use concept and obtain from the lands which are the subject of the lease offers the greatest net public benefit. It is the position of Edwards that there is no basic conflict between the uses proposed by the Agricultural Research Service and oil and gas exploration, so long as the Agricultural Research Service is protected by adequate stipulations, and that in the absence of such a conflict it is in the best interests of the public and the management of federal lands that the lease offers be accepted.

In response, the Agricultural Research Service has reconsidered its position and has withdrawn its objection to the issuance of ten of the leases and parts of four leases, subject to the acceptance of various stipulations and bonds to protect the experimental station. <sup>4/</sup> This change of position by the Agricultural Research Service warrants vacating the decisions rejecting the offers as to those leases and portions of leases to which it has withdrawn its objections. The

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<sup>4/</sup> Specifically, its objections have been withdrawn to all of serial numbers M21806, M21807, M21808, M21809, M21814, M21874, M21875, M21876, M21877, M21878 and parts of serial numbers M21810 through M21813 as designated below:

- M21810. Section 21 - disapprove all except lots 5, 6, 7 and 8.  
           Section 22 - disapprove all except SE 1/4 SE 1/4 and  
                     lots 6, 9, 10 and 11.  
           Section 23 - disapprove NE 1/4 and lots 1, 2, 3, 4, and 5.  
           Section 24 - disapprove N 1/2 NW 1/4.
- M21811. Section 13 - disapprove all except SE 1/4 SE 1/4.  
           Section 14 - disapprove all.  
           Section 15 - disapprove all.  
           Section 16 - disapprove all.
- M21812. Section 11 - disapprove SE 1/4 SE 1/4 and lot 8.  
           Section 12 - disapprove S 1/2, S 1/2 NE 1/4, and  
                     lots 1 and 2.
- M21813. Section 17 - disapprove lots 6, 7 and 8.  
           Section 20 - disapprove lots 8 and 9.

Agricultural Research Service has, however, renewed its objection to leasing portions of four leases (see note 4 describing those portions) because maintaining some of the areas, in an undisturbed state, is critical to the station's flexible use of the lands; other portions are being transferred to the Department of the Interior for designation as natural areas. The Montana State Office has informally requested the cases be remanded for further study. In view of this request and as there is presently insufficient information to ascertain whether additional protective measures might overcome the Service's objection to leasing those portions of the four leases, the decisions are also vacated as to those portions of the leases.

On remand, the leases to which the Agricultural Research Service has no objection may be issued with the appropriate stipulations. Further consideration shall be given to leasing the other areas, after consultation with all agencies concerned, and evaluation of all pertinent criteria and policies, to assure the public interest will be served by whatever discretionary action is then taken.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases are remanded to the Bureau of Land Management for appropriate action consistent with this decision.

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Joan B. Thompson, Member

We concur:

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Frederick Fishman, Member

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Anne Poindexter Lewis, Member

